

FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

EXPORT AGENCIES CORPORATION

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-0474

Decision No. CU-400

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by EXPORT AGENCIES CORPORATION in the amount of \$12,909.75 plus interest based upon the asserted loss of payment for merchandise shipped to Cuba.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are

a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1) of the Act defines the term "national of the United States" as "(B) a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity."

An officer of the claimant corporation has certified that the claimant was organized in New York and that all times between January 1, 1959 and presentation of this claim on October 1, 1965, all of the outstanding capital stock of the claimant was owned by Lewis F. Feldhun, a United States national since his birth on March 10, 1906. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

This claim is based on the loss of payment for automotive parts shipped by the claimant to various customers in Cuba. The record contains letters from various banks in Cuba stating that these customers had made payments to the banks in local currency, and that the banks were awaiting a dollar reimbursement release from the Monetary Stabilization Fund, a Cuban government agency as follows:

<u>Consignee</u>	<u>Amount Paid</u>	<u>Collecting Bank</u>
Megido y Cia	\$ 265.45	The First National Bank of Boston
Andrade Motor Co.	664.92	Irving Trust Company
Pedro Martin Retancourt	500.06	Irving Trust Company
Camaguey Motors	1,037.99	Banco Continental Cubano
Samuel E. Hijo	1,423.54	Banco Agricola E Industrial
Johnies Rodriguez	790.89	Banco Agricola E Industrial
Johnies Rodriguez	421.99	First National City Bank
Jose R. Hernandez	558.36	The First National City Bank of New York
Cia Comercial y De Transportes	3,503.17	First National City Bank
Soler Motors, S.A.	987.19	Banco Continental Cubano
Import Dist. Exportadora, S.A.	734.85	Banco Continental Cubano
Auto Lizmen, S.A.	327.69	The First National City Bank of New York
Rafael Figueroa Sousa	506.64	The Royal Bank of Canada
Erginio Fernandez Garcia	419.14	The First National City Bank of New York
Antonio Perez Munoz	409.33	The First National City Bank of New York
Gumersindo Gonzalez	358.54	First National City Bank

In all of the above cases, claimant states it has not received the funds.

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded not only transfers of funds to creditors abroad, but also payment to creditors within Cuba, by numerous, unreasonable and costly demands upon the consignees, who were thus deterred from complying with the demands of the Cuban Government. The Commission holds that Cuban Law 568 and the Cuban Government's implementation thereof, with respect

to the rights of the claimant herein, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba into the contractual rights of the claimant, which resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See the Claim of The Schwarzenbach Huber Company, FCSC Claim No. CU-0019; and the Claim of Etna Pozzolana Corporation, FCSC Claim No. CU-0049).

Accordingly, in the instant claim the Commission finds that claimant's property was lost as a result of intervention by the Government of Cuba and that in the absence of evidence to the contrary, the loss occurred on the days following collection by the Cuban banks as follows:

<u>ON</u>	<u>AS TO</u>
October 1, 1959	\$ 421.99
October 14, 1959	3,503.17
November 10, 1959	265.45
December 10, 1959	250.03
December 25, 1959	358.54
January 14, 1960	244.95
January 16, 1960	558.36
January 26, 1960	250.03
February 4, 1960	726.89
February 23, 1960	310.08
March 5, 1960	1,025.64
March 10, 1960	327.69
March 11, 1960	409.33
March 18, 1960	244.95
March 25, 1960	244.95
March 29, 1960	260.30
March 30, 1960	518.99
April 13, 1960	664.92
April 27, 1960	395.45
May 4, 1960	419.14
June 1, 1960	1,113.46
July 8, 1960	395.44

The Commission has decided that in certification of loss on claims determine pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement. (See the Claim of Lisle Corporation, FCSC Claim No. CU-0644).

Accordingly, the Commission concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from the dates on which the loss occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that EXPORT AGENCIES CORPORATION suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Twelve Thousand Nine Hundred Nine Dollars and Seventy-Five Cents (\$12,909.75) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D. C.  
and entered as the Proposed  
Decision of the Commission

OCT 18 1967

*Edward D. Re*  
Edward D. Re, Chairman

*Theodore Jaffe*  
Theodore Jaffe, Commissioner

*LaVern R. Dilweg*  
LaVern R. Dilweg, Commissioner

This is a true and correct copy of the decision of the Commission as entered as the final decision on 21-NOV-1967

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)